

1984 S.C. Op. Atty. Gen. 209 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-87, 1984 WL 159894

Office of the Attorney General

State of South Carolina

Opinion No. 84-87

July 26, 1984

*1 RE: Inquiry dated February 24, 1984 (Opinion #841)

The Honorable J. P. Strom

Chief

South Carolina Law Enforcement Division

Post Office Box 21398

Columbia, South Carolina 29221

Dear Chief Strom:

Attorney General Medlock has referred your letter of February 24, 1984, to me for inquiry and reply. The questions presented by you were as follows: First, under what conditions may a Magistrate's Constable carry a firearm and make an arrest, and, second, what training is required for a Magistrate's Constable to maintain his authority and who is responsible for issuing the proper identification?

Some of your questions have been dealt with by prior opinions of this office, which I will refer to in this letter. For example, regarding your first inquiry as to the powers of a Magistrate's Constable to make an arrest, this office has issued an opinion that a Magistrate's Constable does not have general authority as a peace officer and is limited to the specific duties of executing writs and warrants issued by the Magistrate, maintaining order in Magistrate's Court at the direction of the Magistrate, and other specified statutory duties such as drawing juries. In addition, a Magistrate's Constable does not have the power to arrest without a warrant for a misdemeanor committed in his presence. See, 1971 Op. Atty. Gen. No. 3138, p. 90. (Copy enclosed).

Regarding the other part of your first inquiry, the authorization for a Magistrate's Constable to carry a pistol, my examination of the criminal provisions of our Code of Laws generally relating to the possession of pistols, found at §§ 16–23–10 et seq., and the regulation of pistols, found at §§ 23–31–110 et seq., Code of Laws for South Carolina (1976) as amended, does not show an exception for Magistrates' Constables. However, § 22–9–180, Code of Laws of South Carolina, 1976, as amended, allows Magistrates' Constables to carry pistols on their persons when on official duty as such Constables and when going to and from their places of residence, provided they have received the required training by the South Carolina Law Enforcement Division. Such provision was a part of Act No. 667 of 1976, now found at §§ 22–9–180 through 22–9–210 of the 1976 Code of Laws as amended, which further provided for Magistrates' Constables to attend the Criminal Justice Academy and SLED to promulgate rules and regulations to implement such Act.

Section 22–9–180, supra also authorizes you, after a hearing and for cause, to deny the privilege of carrying a pistol to a Constable who commits certain violations in the use of a pistol. There is no specific statutory provision directing SLED to authorize a Constable to carry a pistol. However, inasmuch as § 27–9–180, supra, grants Magistrates' Constables the privilege to carry a pistol under certain conditions and grants you the authority to deny the privilege for cause, such provision may be read as implying that SLED may grant the privilege. Where a statute expressly grants some power, that grant carries with it by necessary implication other powers necessary to execution of the statute. State v. Cain, 78 S.C. 348, 58 S.E. 937 (1907). SLED has authority to grant pistol permits under other circumstances, see § 23–31–120, and may impliedly do so for Magistrates' Constables.

*2 As to the training required of Magistrates' Constables, I can only refer you to the provisions of § 22-9-190, supra, which as referenced, requires such individuals to attend the Criminal Justice Academy, and § 22-9-180, supra, which references such individuals receiving the required training by SLED. Inasmuch as § 22-9-200, supra, authorizes SLED to promulgate rules and regulations to implement the provisions of Act No. 667 of 1976, it appears that it would be within the authority of SLED to establish the type of training required of Magistrates' Constables.

If there are any questions concerning the above, please contact me.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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